No. 734.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

UNITED STATES OF AMERICA,
Petitioner,

v.

COMMERCIAL CREDIT COMPANY, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MEMORANDUM FOR RESPONDENT.

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The Respondent does not oppose the petition for a writ of certiorari in this case. However, it believes that the question presented to the Circuit Court of Appeals, the decision of which is now sought to be reversed, is better stated as follows:

> Is it mandatory under Section 26, Title II, of the National Prohibition Act (27 USCA 40; Chapter

85, Act of Oct. 28, 1919; 41 Stat. 315) that an automobile used to unlawfully transport intoxicating beverage liquor within the United States be seized and proceeded against under said statute, under which the rights of innocent lienors are protected, or may such an automobile be proceeded against and forfeited under Sections 3061 and 3062 of the Revised Statutes (19 USCA 482, 483) for the unlawful importation of liquor, under which statute the rights of innocent lienors are disregarded and absolutely forfeited, although the automobile was not actually used in the act of importation.

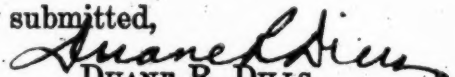
The same question, in somewhat different form, is at present pending before this Court in the case of General Motors Acceptance Corporation *v.* United States, No. 574, on certificate from the Circuit Court of Appeals for the Ninth Circuit. However, it should be noted that each of the four vehicles there concerned "was observed crossing the international boundary line from Mexico." (See second paragraph of certificate of Circuit Court of Appeals, Ninth Circuit.) In the *instant* case, on the other hand, none of the vehicles were used in the actual importation, each was loaded with the liquor in the *United States,* and all were discovered and seized while actually engaged in the act of *transportation.*

The many divergent and conflicting opinions of the various District and Circuit Courts are well annotated in "Appendix B" of Petitioner's petition, and are also listed in the aforementioned certificate of the Circuit Court of Appeals for the Ninth Circuit. We submit that they are so contradictory and incompatible, and have caused such

confusion among Bench, Bar, litigants and counsel, that an early interpretation of the statutes involved by this Honorable Court is not only desirable, but most necessary.

Dated at New York, the 5th day of March, 1932.

Respectfully submitted,



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